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CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
BY DEPUTY

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MARK HOVILA,

Plaintiff,

v.

TWEEN BRANDS, INC.,

Defendant.

**C09 0491** RSL

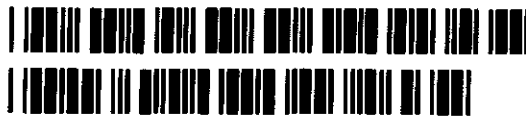
No.

DECLARATION OF GRANT S.  
DEGGINGER

GRANT S. DEGGINGER declares as follows:

1. I am a citizen of the United States of America, am over the age of 18 years, and am competent to make this declaration based upon my personal knowledge and to identify the exhibits attached hereto. I am an attorney at Lane Powell PC, which represents defendant Tween Brands, Inc.

2. On March 11, 2009, plaintiff Mark Hovila ("Plaintiff") commenced this action against Tween Brands, Inc. ("Tween Brands") in the Superior Court of Washington for King County (now pending as Case No. 09-2-11996-1). True and correct copies of the Summons and Complaint for Damages, Injunctive and Declaratory Relief are attached hereto as Exhibit A.



09-CV-00491-DECL

DECLARATION OF GRANT S. DEGGINGER - 1

I declare under penalty of perjury under the laws of the United States and the State of Washington that the foregoing is true and correct.

LANE POWELL PC

By Grant S. Degginger, WSBA No. 15261  
Barbara J. Duffy, WSBA No. 18885  
 Attorneys for Defendant Tween Brands, Inc.

124123.0001/1693993.1

**LANE POWELL PC**  
1420 FIFTH AVENUE, SUITE 4100  
SEATTLE, WASHINGTON 98101-2338  
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SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

MARK HOVILA,

Plaintiff,

vs.

TWEEN BRANDS, INC.

Defendant.

CLASS ACTION

Case No. 09-2-11996-1 SEA

COMPLAINT FOR DAMAGES,  
INJUNCTIVE AND DECLARATORY  
RELIEF

Plaintiff Mark Hovila, individually and as class representative for a CLASS OF  
SIMILARLY SITUATED INDIVIDUALS, alleges as follows:

I. PARTIES, JURISDICTION, VENUE

1.1. Defendant is a Delaware corporation with its principle offices in New Albany,  
Ohio.

1.2. Plaintiff is a resident of Lake Forest Park and the owner of the telephone on  
which he receives calls, including those which are the subject of this complaint.

1.3. The calls in question were received in King County, Washington.

1.4. Venue and Jurisdiction are proper under RCW 4.12.020, RCW 2.08.010, and  
Wash. Const. Art. 4, §6.

COMPLAINT FOR DAMAGES, INJUNCTIVE AND  
DECLARATORY RELIEF - 1

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EXHIBIT A

**II. FACTS**

2.1 In December 2008 the defendant placed a call to plaintiff's telephone number.

2.2. The call consisted of a pre-recorded message delivered by an automatic dialing and announcing device ("ADAD"). The pre-recorded message identified itself as being from defendant, soliciting plaintiff to redeem coupons.

2.3. Upon information and belief, defendant placed hundreds or more substantially similar telephone calls to the telephones of persons in Washington State.

2.4. Upon information and belief, defendant intends to continue to send messages to the telephones of persons in Washington State.

**III. CAUSES OF ACTION**

3.1. Plaintiff realleges the foregoing paragraphs as if fully stated herein. The following causes of action are, to the extent necessary, stated in the alternative.

**Count A. Violation 47 U.S.C. 227(b)(1)(B)**

3.11. Defendant has violated 47 U.S.C. 227(b)(1)(B).

3.12 As a result of said conduct, plaintiff and members of the Class have sustained damages. Plaintiff and all members of the Class are entitled to injunctive relief enjoining defendant's unlawful conduct, as well as incidental statutory or other damages.

**Count B. Violation of RCW 80.36.400**

3.13 Defendant has violated RCW 80.36.400

3.14 As a result of said conduct, plaintiff and members of the Class have sustained damages. Plaintiff and all members of the Class are entitled to injunctive relief enjoining defendant's unlawful conduct, as well as incidental statutory or other damages.

**Count C. Violation of RCW 19.86**

3.15 Under RCW 80.36.400(3), defendant's violation of RCW-80.36.400 constitutes a violation of RCW 19.86, et seq., the Washington Consumer Protection Act ("CPA").

3.16 As a result of said conduct, plaintiff and members of the Class have sustained damages. Under the CPA, plaintiff and all members of the Class are entitled to injunctive relief enjoining defendant's unlawful conduct, as well as incidental and statutory damages and treble that amount as determined by law, and costs of suit and attorney's fees.

**Count D. Declaratory Relief Under The Washington  
Declaratory Judgment Act (RCW 7.24.010)**

3.17 Defendant used an automated dialing and announcement device to send a prerecorded message to the telephones of persons in Washington.

3.18 Plaintiff and the Class are entitled to have their rights, status and legal relations relating to defendant's use of an automatic dialing and announcing device established by this Court.

**IV. CLASS ACTION ALLEGATIONS**

4.1. Plaintiff realleges the foregoing paragraphs as if fully stated herein.

4.2. This class action is brought and may be maintained pursuant to CR 23(b)(2) and (b)(3). Plaintiff seeks to represent a Class comprised of:

All persons who received a prerecorded telephone message on their telephone from defendant sent by automatic dialing machine.

4.3. Numerosity. The class and subclass are each so numerous that joinder of all members is impracticable. Upon information and belief the Class exceeds 1,000.

1       4.4.   **Common Questions of Law and Fact.** The questions of law and fact are the  
 2 same for all class members, including whether the defendant's conduct violated 47 U.S.C.  
 3 227(b)(1)(B).

4       4.5.   **The Plaintiff's Claims are Typical of the Class.** Plaintiff's claims are typical  
 5 of the class in that they arise from defendant's repeated violation of 47 U.S.C. 227(b)(1)(B) and  
 6 RCW 80.36.400, and the CPA as to plaintiff and all other class members.

7       4.6.   **The Plaintiff Will Fairly and Adequately Protect Class.** Plaintiff will  
 8 adequately represent and protect the interests of the class because he has retained competent  
 9 and experienced counsel and his interests in the litigation are not antagonistic to the other  
 10 members of the class.  
 11

12       4.7.   **A Class Action is Maintainable Under CR 23(b)(3).** The questions of law and  
 13 fact common to all members of the class predominate over questions affecting only individual  
 14 members of the class, because all members of the class were subjected to defendant's unlawful  
 15 use of one or more ADADs. The prosecution of separate actions by individual members of the  
 16 class against defendants would create the risk of inconsistent or varying adjudications and  
 17 incompatible standards of treatment. On information and belief, there are no other pending  
 18 class actions concerning these issues. A class action is superior to any other available means  
 19 for the adjudication of this controversy. This action will cause an orderly and expeditious  
 20 administration of the Class's claims; economies of time, effort and expense will be fostered;  
 21 and uniformity of decisions will be ensured at the lowest cost and with the least expenditure of  
 22 judicial resources.  
 23

24       4.8.   **A Class Action is Maintainable Under CR 23(b)(2).** Defendant has acted on  
 25 grounds generally applicable to plaintiff and the Class as alleged herein, thereby making  
 26

1 appropriate injunctive and declaratory relief, as well as incidental damages, with respect to the  
2 Class as a whole.

3 **V. PRAYER FOR RELIEF**

4 WHEREFORE, the plaintiff, on behalf of himself and the class of similarly situated  
5 individuals, respectfully requests that the Court enter judgment in his favor and in favor of the  
6 class for:

- 7
- 8 A. Certification of the Class pursuant to CR 23(b)(2) and CR 23(b)(3);
- 9 B. Granting declaratory, equitable, and/or injunctive relief as permitted by law to  
10 ensure that defendant will not continue to use automatic dialing and  
11 announcement devices to send messages to telephone subscribers;
- 12 C. Judgment against defendant for incidental statutory damages of \$500.00 per  
13 message sent to plaintiff and each member of the Class, and other damages are  
14 permitted under federal and state law;
- 15
- 16 D. Any other or further relief which the court deems fair and equitable.

17 DATED this 11 day of March, 2009.

18 WILLIAMSON & WILLIAMS

19 By 

20 Kim Williams, WSBA # 9077  
21 Rob Williamson, WSBA #11387

22 *Attorneys for Plaintiff and the Proposed*  
23 *Class*

Served by  
ABC Legal

MAR 12 2009

Time: 9<sup>50</sup>

*[Handwritten mark]*

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR KING COUNTY

MARK HOVILA,

Plaintiff,

v.

TWEEN BRANDS, INC.,

Defendant.

CLASS ACTION

No. 09-2-11996-1 SEA

SUMMONS

TO: TWEEN BRANDS, INC., Defendant,

A lawsuit has been started against you in the above-entitled Court by the plaintiff. Plaintiff's claims are stated in the written Complaint, a copy of which is served upon you with this Summons.

In order to defend against the lawsuit, you must respond to the Complaint by stating your defense in writing, and serve a copy upon the undersigned attorney for the Plaintiff within twenty (20) days after the service of this Summons, or within sixty (60) days if this Summons was served outside the State of Washington, excluding the day of service, or a default judgment may be entered against you without notice. A default judgment is one where the Plaintiff is entitled to what has been asked for because you

SUMMONS -1

**WILLIAMSON & WILLIAMS**  
187 FIRST AVE SW  
SEASIDE, WA 98110  
(206) 780-3357  
www.williamson.com


1 have not responded. If you serve a notice of appearance on the undersigned attorney, you  
2 are entitled to notice before a default judgment may be entered.  
3

4 If you wish to seek the advice of an attorney in this matter, you should do so  
5 promptly so that your written response, if any, may be served on time.

6 THIS SUMMONS is issued pursuant to Rule 4 of the Superior Court Civil Rules  
7 of the State of Washington.  
8

9 DATED this 11 day of March, 2009.  
10

11 WILLIAMSON & WILLIAMS

12 By:   
13 Rob Williamson, WSBA # 11387  
14 Kim Williams, WSBA #9077

15 *Attorneys for Plaintiff*  
16  
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26

SUMMONS -2

**WILLIAMSON & WILLIAMS**  
132 PLANTY ROAD SW  
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THE HONORABLE CATHERINE SHAFFER

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

MARK HOVILA,

Plaintiff,

v.

TWEEN BRANDS, INC.,

Defendant.

CLASS ACTION

NO. 09-2-11996-1 SEA

NOTICE OF APPEARANCE

TO: Mark Hovila, Plaintiff

AND TO: Rob Williamson and Williamson & Williams, attorneys for Plaintiff

PLEASE TAKE NOTICE that without waiving any objections as to personal or subject matter jurisdiction, venue, sufficiency of process or service of process, defendant in the above-referenced action hereby appears by its undersigned attorneys, GRANT S. DEGGINGER, BARBARA J. DUFFY, and LANE POWELL PC, and requests that service of all papers and pleadings herein, except writs of original process, be made upon the undersigned attorneys for said defendant at the offices below stated.

DATED: March 27, 2009

LANE POWELL PC

By

Grant S. Degginger, WSBA No. 15261

Barbara J. Duffy, WSBA No. 18885

Attorneys for Defendant Tween Brands, Inc.

NOTICE OF APPEARANCE - 1  
NO. 09-2-11996-1

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206.223.7000 FAX: 206.223.7107

EXHIBIT C

CERTIFICATE OF SERVICE

I hereby certify that on March 27, 2009, I caused to be served a copy of the foregoing  
NOTICE OF APPEARANCE on the following person(s) in the manner indicated below at the  
following address(es):

Rob Williamson  
Williamson & Williams  
187 Parfitt Way SW, Suite 250  
Bainbridge Island, WA 98110-2593  
Telephone: (206) 780-4447  
Facsimile: (206) 780-5557  
E-Mail: robw@williamslaw.com

- ☐ by CM/ECF  
☒ by Electronic Mail  
☐ by Facsimile Transmission  
☒ by First Class Mail  
☐ by Hand Delivery  
☐ by Overnight Delivery

  
Moneca McYnturff

NOTICE OF APPEARANCE - 2  
NO. 09-2-11996-1

124123.0001/1693157.1

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